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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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OGILVY RENAULT LLP
1981 MCGILL COLLEGE AVENUE
SUITE 1600
MONTREAL, QC H3A2Y3
CANADA

EXAMINER

YEAGLEY, DANIEL S

ART UNIT PAPER NUMBER

3611

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/678,119

Applicant(s)

MEYERS ET AL.

Examiner

Daniel Yeagley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-26 is/are allowed.
- 6) ☒ Claim(s) 1-5, 12-17 and 27-36 is/are rejected.
- 7) ☒ Claim(s) 6-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to because Figure 13; numeral 108 should be changed to numeral 48 and numeral 106 should be changed to 36.
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 – 4, 12, 13, and 15 – 17 are rejected under 35 U.S.C. 102(b) as being anticipate by Kiel '531.

Kiel shows a wheelchair having a plurality of wheels 32,34,36,38 mounted to a frame 12, an adjustable anti-tip device 78, a pair of brakes 84, a pair of footrest 40 (figure 2 and 3), a seat assembly 14 having a seat member 52 and a back support member 54, which includes a rocking assembly 60 disposed between the seat assembly and the frame structure, wherein the rocking assembly includes a spring device that maintains the seat in a desired alignment when unoccupied and results in a rocking motion of the seat assembly back and forth about a substantially horizontal axis with respect to the frame structure if a center of gravity of a user is shifted in a rhythmic manner and includes and a rocking motion controlling system having a first and second motion setting device 80 and 82 for adjusting a setting of a selected maximum rocking motion (figure 2, column 2-4), such that the rock motion controlling system has a rock/tilt locking mechanism for selectively locking the seat assembly in a normal unoccupied position with the first setting device incorporated with the rock/tilt locking mechanism.

5. Claims 1 – 5 and 12 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kiel '269.

Kiel shows a wheelchair having a plurality of wheels 88,90 mounted to a frame, an adjustable anti-tip device 114, a pair of brakes 118, a pair of removable footrests mounted on the frame and a seat assembly (figure 2 and 3), the seat assembly having a seat member 16 and a

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back support member 18, which includes a rocking assembly (figure 6) disposed between the seat assembly and the frame structure, wherein the rocking assembly includes a spring device 70 that maintains the seat in a desired alignment when unoccupied and results in a rocking motion of the seat assembly back and forth about a substantially horizontal axis with respect to the frame structure if a center of gravity of a user is shifted in a rhythmic manner and includes and a rocking motion controlling system having a first and second motion setting device (figure 6) for adjusting a setting of a selected maximum rocking motion, such that the rock motion controlling system has a rock/tilt locking mechanism located in a position not accessible by the user when seated in the wheelchair controlled by a controller attached to the wheelchair in a preferred location for selectively locking the seat assembly in a normal unoccupied position with the first setting device incorporated with the rock/tilt locking mechanism.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiel '269 in view of Ayers et al '259.

Kiel disclosed a wheelchair having a spaced apart pair of springs defining a substantially vertical plane transverse to the seat assembly and the frame structure but failed to disclose the vertical oriented spring device being a pair of leaf springs.

Ayers shows a rocking wheelchair that utilizes a leaf spring biasing means and is cited only as an example of an alternative biasing means for providing a vertical rocking motion between a seat assembly and the frame.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have replaced the vertical spring mounted biasing means of Kiel with an alternative vertical biasing means such as leaf springs or some other type of flexible support to alternatively provide a vertical biasing means between the seat and framer to provide a rocking motion.

8. Claims 27 – 32 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiel '269 in view of Minnebraker '540.

Kiel shows a wheelchair that permits a user to rock while seated and is adjustable, wherein the wheelchair comprises a pair of main wheels *adapted to drive* the wheelchair with at least one caster wheel connected to the frame pivoted about a substantial vertical axis, an adjustable anti-tip device 110, brakes 118, a seat assembly with back support member 18 and side support members attached to a seat member 16, and includes a foot resting device comprising a pair of footrests 40 and 100 being adjustable in height relative to the seat assembly and the frame, the foot resting device selectively mounted to the wheelchair in a first position in which the foot resting device 40 is adapted to rock together with the seat assembly, such that the footrests are adjustable in a horizontal direction relative to the seat assembly (figure 2), and wherein the foot resting device includes a second position (figure 1) in which the foot resting device 100 is stationary with respect to the seat assembly during a rocking motion, the wheel chair includes a rocking assembly (figure 6) disposed between the seat assembly and the frame with a spring device maintaining the seat member in a desired alignment and results in a yielding

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rocking motion of the seat assembly back and forth about a substantially horizontal axis with respect to the frame when a center of gravity of a user is shifted in a rhythmic manner, the wheelchair further includes a rock/tilt locking mechanism incorporated with means for adjusting a selected maximum rocking motion of the seat assembly, the means for adjusting selects a maximum rocking motion of the seat assembly within a predetermined range (figure 6), but failed to disclose a frame having means for selectively attaching the main wheels in a plurality of predetermined positions or at least one caster wheel being adjustable in height relative to the frame.

Minnebraker shows a wheelchair having a frame comprising a means for selectively attaching the main wheels in a plurality of predetermined positions and at least one caster wheel being adjustable in height relative to the frame.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the wheelchair of Kiel with a selective means of adjusting the height of the front and rear wheels in order to change the angle of the wheelchair and seat relative to the ground or other supporting surface and to additionally provide several different positions of the wheels to change the center of gravity and wheelbase of the wheelchair as taught by Minnebraker.

9. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiel '269 as modified by Minnebraker '540 in further view of O'Neill, Sr. '609.

Kiel disclosed a wheelchair with a foot resting device comprising a pair of adjustable footrests at different heights relative to the seat assembly and the frame structure but failed to

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disclose the footrest being pivotal about a substantially vertical axis in a first and second position.

O'Neill shows a wheelchair having a footrest that teaches the use of a vertically pivotal footrest (figure 6 – 7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the adjustable foot resting device of Kiel with an alternative or modified foot resting device pivoted to a vertical axis support means on the wheelchair as is more typically found on modern wheelchairs; for example; like that shown by the footrests of O'Neil, in order to provide a more simple alternative footrest dependant upon users preference and provided with a selective pivotal positioning of the footrest between a first and second position as taught by O'Neil (figure 6A and 6B) to provide a pivotal footrest to a non-use position.

Allowable Subject Matter

10. Claims 18 – 26 are allowed.

11. Claims 6 – 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments filed 3/9/05 have been fully considered but they are not persuasive and further applicant's arguments with respect to claims 1 – 17 and 27- 36 have been considered but are moot in view of the new ground(s) of rejection as amended.

Kiel ' 531 and 269 as stated above clearly discloses a wheelchair that permits a user to rock while seated, wherein the rocking wheelchair of Kiel includes a spring device and is readable as being adjustable for the intended use of setting a rocking motion as broadly claimed and O'Neal clearly discloses a substantially vertical pivotal footrest device.

In response to applicant's argument that Kiel stops do not function as adjustable rocking motion setting device, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dickie '206 discloses a rocking wheelchair

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is (571)-272-6655. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on (571) - 272 - 6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.Y.


PAUL N. DICKSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600